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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,470	02/07/2001	Cheree L. B. Stevens	ADV12 P300A	4695

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PRICE HENEVELD COOPER DEWITT & LITTON, LLP
695 KENMOOR, S.E.
P O BOX 2567
GRAND RAPIDS, MI 49501

EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/778,470	STEVENS ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *49-81,83-111 and 118-124* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *49-81,83-111,118,119 and 124* is/are rejected.

7)☒ Claim(s) *120-123* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

In the amendment filed March 29, 2004, applicant states that claims 82 and 112-117 are not entered. However, applicant does not request for the entry of these claims from the previous amendment in the filing of the RCE. It is not clear if applicant intends for these claims to be included in the pending claims or applicant is withdrawing these claims from consideration. Clarification is requested. Until further clarification, claims 82 and 112-117 will not be considered because they are not listed in the pending claims.

Claims 49-81, 83-111, 118-124 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 49, the language " substantially free of corn starch " is indefinite because the scope of the claim cannot be ascertained. It is not known how much corn starch can be present and the specification does not define what " substantially free " mean. Page 8 of the specification discloses 10% or even more of cornstarch ingredient may be used. Thus, it is not clear what " substantially free" constitute.

In claims 70, 73,74, 84,89,96,97, applicant cites a Markush grouping; however, the language used is not consistent with Markush grouping. The proper language is " selected from the group consisting of ". The claims recite " chosen from the group comprising"; it is not clear what is intended.

Claims 92 , 111 and 119 have the same problem as claim 49.

In claim 118, the phrase " containing about 0% corn starch" is indefinite because the scope of the claim cannot be determined. It is not known what amount of starch

would be considered as " about 0%"; the specification does not define what will constitute " about 0%" because it discloses 10% or even more or 0% may be used.

Claim 119 is a duplicate of claim 111; it is not clear what is intended.

Claim 123 is vague and indefinite because it depends on claim 113 which is not a pending claim; it is not clear what is intended.

Claims 118 and 124 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The amount " about 0% corn starch" in claim 119 is not disclosed in the specification. Also, the amount of potato starch in claim 124 is not disclosed in the specification.

Claims 49-51, 55-57, 61-63, 73-75, 77-79, 81-85, 88-89, 90, 92-98, 111, 118, 119 and 124 are rejected under 35 U.S.C. 102(e) as being anticipated by Horn et al. (6080434)

Horn et al disclose coat formulations which provide improved functionality to french fry products. The coating comprises at least 30% by weight of a first cross-linked starch selected from the group consisting of potato and tapioca, from 5-20% low soluble dextrin, from 5-45% rice flour, .1% gum and leavening agents. Optional minor ingredients such as maltodextrins, dextrins, microcrystalline cellulose, whey, dried egg etc... can be added. Leavening agents are added at sodium bicarbonate of about .9

parts soda to 1.1 parts SAPP. The dextrins can be obtained from sources such as potato, corn and tapioca. The rice flours include long grain, medium grain or waxy rice. The process of producing the French fries includes the steps preparing potato strips, blanching the strips, treating the blanch strips in a brine solution, drying the strips, coating the strips with the aqueous slurry, draining the coated strips and parfrying the strips. The potato strips are then frozen until they are prepared for final consumption. The potato strips are cooked by finish frying or baking. The strips are characterized by a crisp outer layer, a moist tender interior and improved flavor qualities. (see columns 3-7 and the examples)

The reference discloses all the limitations of the above cited claims. With respect the limitations of " substantially free of corn starch" and " about 0% corn starch", it is not known what amount of corn starch is covered by such language. The amount of corn starch disclosed by Horn et al can be 2%; this amount is very small in comparison to other ingredients. Thus, it is interpreted the Horn et al formulation is substantially free of corn starch or that the amount of is about 0% because it is not known what will considered as about 0%. The language " substantially free of corn starch" or " about 0%" means some corn starch is present. The specification discloses 10 or more can be added. The claims are interpreted in light of the specification which means the starch can be 10 or more. The amount disclosed by Horn et al is smaller than this amount. The ranges of dextrin and rice flour disclosed in the reference gives the ratio as claimed.

Claims 52-54,58-60, 64-72, 76,80,86-87,91,99-110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al.

Horn et al do not disclose the potato starch is low-amylose content potato starch, the amount of color agent, adding salt and sugar, high solubility dextrin, the amount of dry composition, applying the coating composition as a dry mix, the holding time, cooking after coating without freezing

It would have been obvious to choose the solubility depending on the type of coating mix. For example, if a batter is made, it would have been obvious to choose high solubility dextrin so that it can dissolve quickly or if a dry mix is made, it would have been obvious to choose low solubility dextrin so that it is not affected easily by moisture. It would also have been to choose low amylose or high amylose starch depending on the property wanted. The two components in starch are amylose and amylopectin. Each component gives different property to the starch. It would have been obvious to use starch that is high in one component or the other depending on the property desired. Applicant has not shown any criticality or unexpected result in the claimed low amylose starch. It would also have been obvious to add sugar, salt and coloring to the coating composition to enhance the taste and appearance; the amount to be added depends on the taste and appearance desired. It would have been obvious to one skilled in the art to determine the amount of water to form a slurry which would give the most optimum coating; this can readily be determined through routine experimentation. It would have been obvious to apply the coating mix as a slurry or a dry mix depending on the thickness of the coating wanted. A slurry will give a thicker coating than a dry

mix. When a dry mix is applied to the food substrate, it would have been obvious to moisten the food so that the dry mix can more easily adhere to the substrate. It would have been obvious to freeze or not freeze the product depending the time of consumption of the product after it is coated. If the product will be consumed in a short time after coating, then it is obvious freezing is not needed. It would have been obvious to hold the coated food for any amount of time depending on the time of consumption. It would have been obvious to hold the food at ambient temperature or under heat depending on the temperature wanted in the product. If it is desired for the food not to be hot, it would have been obvious to hold it under ambient temperature or vice versa.

Claims 120-123 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The claims are allowable because the prior art does not teach a coating composition which is free of corn starch.

Applicant's argument had been addressed in previous office action and will not be repeated in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 28, 2004

LIEN TRAN
PRIMARY EXAMINER
Group 1700